

SENATE BILL REPORT

SHB 1854

As Reported By Senate Committee On:
Natural Resources, Energy & Water, April 4, 2003

Title: An act relating to joint operating agencies.

Brief Description: Allowing cities and public utility districts to purchase energy, including the capability to produce energy, from the agency.

Sponsors: House Committee on Technology, Telecommunications & Energy (originally sponsored by Representatives Crouse, Sullivan, Delvin, Blake, Bush and Grant).

Brief History:

Committee Activity: Natural Resources, Energy & Water: 3/27/03, 4/4/03 [DPA].

SENATE COMMITTEE ON NATURAL RESOURCES, ENERGY & WATER

Majority Report: Do pass as amended.

Signed by Senators Morton, Chair; Hewitt, Vice Chair; Doumit, Fraser, Hale, Oke and Regala.

Staff: Richard Rodger (786-7461)

Background: In the 1950s, the Legislature authorized formation of joint operating agencies that allowed cities and public utility districts to join together to develop electricity generation projects. In 1957, 17 public utilities formed the Washington Public Power Supply System. The first project was the Packwood Lake Hydroelectric Project.

During the 1970s, the joint operating agency began construction of three nuclear facilities, one of which is the Columbia Generating Station at Hanford, the only operating nuclear power plant generating electricity in the state. A joint operating agency is authorized to issue tax exempt revenue bonds to finance its projects. In the case of the first three nuclear power plants, revenue from the Bonneville Power Administration (BPA) was used to guarantee repayment of the revenue bonds through a system of net-billing. An IRS ruling in 1972 changed the tax exempt status of federal agencies and further net-billing agreements were prohibited.

The joint operating agency and others, as part of a regional program of expanding electricity generation, began construction of two additional nuclear facilities. Since the net-billing arrangement with BPA was not available, participants in the project signed participant agreements to finance the operation and construction of plants four and five.

Construction on plants four and five was halted in the early 1980s. In 1983 the Washington Supreme Court invalidated the 29 participant agreements between the joint operating agency and these publicly-owned utilities. The court found that these utilities had authority to purchase electricity from the joint operating agency but did not have the authority to contract

for the capacity of a facility. Contracting for capacity has the effect of guaranteeing payment of a project that may or may not produce any electricity.

Currently the joint operating agency, known as Energy Northwest, has 17 members (three cities and 14 public utility districts). Energy Northwest has recently developed two wind power generation sites, a solar power demonstration site, and is exploring generation using biomass, fuel cells, and ocean wave power.

Summary of Amended Bill: Cities and public utility districts (PUDs) may purchase electric power from a joint operating agency that the city or district requires for its present and future output. Contracts to purchase power from qualified alternative energy resources may include the capability to produce electricity as well as the actual output of the facility. The contracts may also include provisions that require the city or PUD to make payment whether or not the project is completed or operating. The contracts may also provide that the contract payments are not subject to reduction and shall not be conditioned on the performance or nonperformance of the operating agency or any city or PUD under the contract.

Amended Bill Compared to Substitute Bill: The ability of cities and PUDs to contract with joint operating agencies for capability in excess of energy projects, the output needed is limited to "qualified alternative energy projects."

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: This bill proposes to fix a problem that arose in the 1980s. A court decision held that cities and PUD can contract to buy electricity from a joint operating agency but could not accept the risk during construction that the project might not be completed. This is known in the industry as "dry hole risk." They can accept risk for a project if they have an ownership interest in it, and they can accept the risk for the period after commercial operation begins. It's important to Energy Northwest because projects are financed by issuance of debt secured by a promise to pay by those utilities that purchased the capacity of the project. The dry hole risk issue creates a gap in the ability to obtain financing for that portion of the project. Energy Northwest recently experienced this problem during construction of a wind project. To cover the gap in financing security during construction, insurance had to be purchased. It was difficult to obtain and was very costly. It added 4 percent to the cost of the project and 6 percent to the long-term financing of the project. Other renewable projects are being considered that would benefit from passage of this legislation through increased public participation and lower costs.

Testimony Against: None.

Testified: Albert Mouncer, Energy Northwest (pro).